

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MR. ALDEN ALEXANDER THOMAS, SR.,)
)
 Petitioner,) Case No. CV 13-8015-DSF(AJW)
)
 v.)
)
 WARDEN, PAUL D. BRAZELTON,) MEMORANDUM AND ORDER
) DISMISSING PETITION
 et al.,) WITHOUT PREJUDICE
)
 Respondents.)
)

Petitioner filed a petition for a writ of habeas corpus on October 30, 2013. On November 6, 2013, the petition was dismissed without prejudice and with leave to amend. The order dismissing the petition explained that none of petitioner's allegations stated cognizable claims for federal habeas relief and directed petitioner to file an amended petition curing the deficiencies noted. On December 4, 2013, petitioner filed an amended petition that is nearly identical to the original petition.

According to petitioner, his petition concerns "prison discipline," "a parole problem," and "other." [Petition at 2]. He alleges the following three claims for relief:

1 1. "Facts, this state petitioner due process rights was violated
 2 on July/12/2013 when the appeal coordinator has single handedly remove
 3 [sic] the appeal process from this inmate in violation of the Fourth
 4 through the (14) Amendment...." [Petition at 5].

5 2. "Facts, on April/11/2013 the State said it would be ill
 6 advised to grant the outright release of inmate[s] who are not United
 7 States citizens, this violated my state and federal rights to due
 8 process under the Fourth and (14) Amendment...." [Petition at 5(2)].¹

9 3. "Facts, on May/2/2013 this petitioner due process was
 10 violated when the (BPH) refused to advance my hearing after a review
 11 on the merits." [Petition at 6].

12 A habeas corpus petition is the exclusive mechanism for a state
 13 prisoner to challenge the fact or duration of his or her confinement,
 14 "either directly through an injunction compelling speedier release or
 15 indirectly through a judicial determination that necessarily implies
 16 the unlawfulness of the State's Custody." Wilkinson v. Dotson, 544
 17 U.S. 74, 81 (2005)(emphasis in original). On the other hand, a civil
 18 rights action pursuant to 42 U.S.C. § 1983 "remains available for
 19 procedural challenges where success in the action would not
 20 necessarily spell immediate or speedier release for the prisoner."
 21 Wilkinson, 544 U.S. at 81 (emphasis in original).

22 As best the Court can discern, none of petitioner's allegations
 23 challenge the constitutional validity of his conviction, his sentence,
 24 or his continued confinement. Petitioner does not challenge a
 25 particular action or decision that directly affects the duration of
 26

27 ¹ The petition includes two versions of page 5. The Court refers to
 28 the sequentially second page 5 - on which petitioner has set forth
 "Ground two" - as 5(2).

petitioner's custody. Even petitioner's parole-related challenge does not attack the validity of the underlying decision denying him parole. Although petitioner's ultimate goal may be a speedier release on parole, the only relief available on petitioner's claim regarding an advanced hearing date would be a shorter wait for his next parole hearing, giving him an earlier opportunity to attempt to convince the Board of Parole Hearings that he should be deemed suitable for parole. See Wilkinson, 544 U.S. at 82 (claim seeking invalidation of state procedures used to deny parole suitability is cognizable under 42 U.S.C. § 1983).

Because the petition fails to raise a cognizable claim for federal habeas relief, it is dismissed without prejudice.²

It is so ordered.

12/13/13

Dated: _____



Dale S. Fischer
United States District Judge

² While a federal court has discretion to recharacterize a mislabeled habeas corpus petition as a civil rights action and to permit the action to proceed as such, ordinarily such a recharacterization is inappropriate because of the filing fee requirements of the Prison Litigation Reform Act of 1995 ("PLRA"), its provisions requiring sua sponte review of complaints, and its limits on the number of actions a prisoner may be permitted to file in forma pauperis. See generally Robinson v. Sherrod, 631 F.3d 839, 841 (7th Cir.)("[W]e think it worth reminding the district courts not to recharacterize a prisoner's petition for habeas corpus as a prisoner civil rights complaint without his informed consent...."), cert. denied, 132 S.Ct. 397 (2011).